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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,243	09/26/2001	Curt R. Eyster	LIFE063	8576

7590 10/12/2005

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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/963,243

Applicant(s)

EYSTER ET AL.

Examiner

Lyle A. Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 112***

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 1,5 and 10 all claim “ ... at least a portion of the bottom surface... has a reflectivity of ... the support surrounding the aperture with a reflectivity of less than about ...” is unclear if this is a description of the same area or of two different areas. If two different areas are intended they might be designated as a first area and a second area.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 and 10-11 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hirayaja et al.

See the appropriate paragraph of the 2/23/05 Office action.

Hirayaja et al teach a test device and use with a colorimeter to make optical determinations from a colored liquid such as blood. Columns 5-6 lines 60 - 16 respectively teach the surfaces can be black in color resulting in a reflectance of 5.3% at a wavelength of 640 nm. The 7/26/05 amendments state the reagent pad is “immediately adjoining the receiving aperture”. The Office maintains this language does not require the pad to be in contact with the aperture. The Office maintains this language is properly read on Hirayaja et al. that teaches the pad underlying the aperture without any structures between the two (e.g. the pad is immediately adjacent to the aperture because there are no intervening structures). The limitations of claims 3

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and 11 require the aperture is suitable for receiving volumes of less than 5 microliters. In the absence of better defining what specific structure is intended to receive the volumes of less than 5 microliters, the Office maintains Hirayaja et al. would be suitable for receiving the claimed volumes of less than 5 microliters.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirayaja et al. in view of Phillips et al.

See Hirayaja et al. supra and the appropriate paragraph of paper 7.

***Response to Arguments***

Applicant's arguments filed 7/26/05 have been fully considered but they are not persuasive.

Applicants' state the reagent pad is "immediately adjoining the receiving aperture" and defines over the art of record. The Office maintains this language does not require the pad to be in contact with the aperture. The instant language is best read as suggesting there can be no other structures between the aperture and the pad. This arrangement is met by Hirayaja et al. that teaches the pad underlying the aperture without any structures between the two (e.g. the pad is immediately adjacent to the aperture because there are no intervening structures).

Applicants' state Hirayaja et al. fails to teach the bottom portion around the aperture with the claimed reflectivity. In light of the above 35 USC 112 second paragraph issues, it is not clear

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what structure is intended. However, the Office maintains Hirayaja et al. teach a bottom surface and aperture with indistinguishable optical characteristics.

Applicants' traverse the combined teachings of Hirayaja et al. in view of Phillips et al. on the grounds Hirayaja et al. is a defective primary reference (e.g. does not teach the claimed "immediately adjacent" relationship). The Office does not agree and maintains the rejections for the above reasons.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Lyle A Alexander  
Primary Examiner  
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